

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Rocking BS Ranch, Inc.
Wetumka, OK

Respondent

Facility Number OKU000216

§ Docket No. CWA-06-2007-1974

§

§

§ Proceeding to Assess a Class I

§ Civil Penalty Under § 309(g)

§ of the Clean Water Act

§

§ AMENDED

§ ADMINISTRATIVE COMPLAINT

I. Statutory Authority

This Amended Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Amended Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6 (herein "Complainant"). This Class I Amended Administrative Complaint is issued in accordance with, and this action will be conducted under, "the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits," including rules related to "Administrative Proceedings not Governed by Section 554 of the Administrative Procedures Act", 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that the Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. Findings of Fact and Conclusions of Law

1. Rocking BS Ranch, Inc. ("Respondent") is a Corporation incorporated under the laws of the State of Oklahoma, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

2. At all times relevant, the Respondent owned or operated a swine facility located about three miles south and eight miles east of Wetumka, Hughes County, Oklahoma ("the facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants," to the receiving waters of Middle Creek, which is a "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because the Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the U.S., the Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. The EPA received an Oklahoma Department of Agriculture, Food, & Forestry (ODAFF), Agriculture Environmental Management Services 2007 NPDES Annual Inspection Report dated April 4, 2007, in which an inspector conducted an on-site inspection of Rocking BS Ranch. The following violations were identified:

- a. The ODAFF inspector documented an unauthorized discharge that occurred on January 23, 2007, (discharge report D-07-030) that originated from your west lagoon, entered an unnamed tributary to Middle Creek and then to Middle Creek.

7. Each day of unauthorized discharge was a violation of Section 301 of the Act, 33 U.S.C. § 1311.
8. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), the Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$32,500.
9. EPA filed the original Complaint on September 24, 2007. Pursuant to 40 C.F.R. § 22.14 (c), Complainant may amend the complaint once before an answer is filed. To date, EPA has not received an answer from the Respondent.
10. EPA has notified ODAFF of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of an administrative penalty against the Respondent, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).
11. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

III. Proposed Penalty

12. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes

to assess against the Respondent a penalty of sixteen thousand eight hundred dollars (\$16,800).

13. The proposed penalty amount will be determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

14. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, subpart I shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Practice Act. However, pursuant to 40 C.F.R. § 22.42(b), Respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. § 554, and Respondent waives this right unless Respondent, in its Answer, requests a hearing in accordance with 5 U.S.C. § 554.

IV. Failure to File an Answer

15. If the Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, the Respondent must file an Answer to this Amended Complaint within thirty (30) days after service of this Amended Complaint whether or not the Respondent requests a hearing as discussed below.

16. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy enclosed). Failure to file an Answer to this Amended Complaint within thirty (30) days of service of the Amended Complaint shall constitute an admission of all facts alleged in the Amended Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Amended Complaint will constitute an admission

as to that finding or conclusion under 40 C.F.R. § 22.15(d).

17. If the Respondent does not file an Answer to this Amended Complaint within thirty (30) days after service of this Amended Complaint, a default order may be issued against the Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Amended Complaint due and payable by the Respondent without further proceedings sixty (60) days after a final default order is issued.

18. The Respondent must send its Answer to this Amended Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

19. The Respondent shall also send a copy of its Answer to this Amended Complaint to the following EPA attorney assigned to this case:

Ellen Chang-Vaughn (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

20. The Answer must be signed by the Respondent, the Respondent's counsel, or other representative on behalf of the Respondent and must contain all information required by 40 C.F.R. § 22.05 and § 22.15, including the name, address, and telephone number of the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

21. The Respondent may request a hearing to contest any material allegation contained in this Amended Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, including 40 C.F.R. §§ 22.50 through 22.52.

22. Any request for hearing should be included in the Respondent's Answer to this Amended Complaint; however, as discussed above, the Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

23. Should a hearing be requested, members of the public who commented on the issuance of the Amended Complaint during the public comment period would have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. Settlement

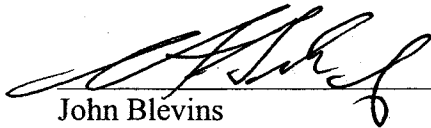
24. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, the Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. The Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both.

To request an informal conference on the matters described in this Amended Complaint, please contact Mr. Jeremy Seiger, of my staff, at (214) 665-8044.

25. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive the Respondent's right to a hearing on any matter stipulated therein or alleged in the Amended Complaint. Any person who commented on this Amended Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Amended Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

26. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Amended Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Copy by certified mail,
return receipt requested: Mr. Bert Bishop
Rocking BS Ranch
8644 East 127th
Wetumka, OK 74883

Dan Parrish, Director
Agriculture Environmental Management Services
Oklahoma Department of Agriculture, Food, and Forestry
P.O. Box 528804
Oklahoma City, OK 73152-8804

Hand-delivered: Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733

Dated: DEC 05 2007

Jackie Samuel